STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

CITY OF FRASER and
MICHIGAN MUNICIPAL LEAGUE
LIABILITY & PROPERTY POOL, a
municipal corporation, as subrogee of
City of Fraser,

Plaintiffs,

vs. Case No. 2005-1312-NP

ELGIN SWEEPER COMPANY,
FEDERAL SIGNAL CORPORATION
and BELL EQUIPMENT COMPANY,
Jointly and Severally,

Defendants.

_____/

OPINION AND ORDER

Plaintiffs City of Fraser and Michigan Municipal League Liability & Property Pool move to compel discovery and have requests for admission deemed admitted.

I. BACKGROUND

Plaintiffs City of Fraser and Michigan Municipal League filed this action on April 1, 2005 asserting plaintiff City of Fraser is a member of plaintiff Michigan Municipal League, a group self-insurance pool. Plaintiff City of Fraser purchased a 1998 Elgin GeoVac Street Sweeper from defendant Bell Equipment Company that was designed and manufactured by defendant Elgin Sweeper Company and/or defendant Federal Signal Corporation.

Plaintiffs City of Fraser and Michigan Municipal League aver the street sweeper caught fire on April 2, 2002 due to its defective design and/or manufacture. The fire damaged plaintiff

City of Fraser's Department of Public Works building that was insured by plaintiff Michigan Municipal League.

Accordingly, plaintiffs City of Fraser and Michigan Municipal Leagues' complaint alleges: I. Breach of Contract; II. Negligence and III. Breach of Warranty.

Plaintiffs now move to compel discovery and to have requests for admission deemed admitted.

II. ANALYSIS

A. Compel Discovery

In *Linebaugh v Sheraton Michigan Corp,* 198 Mich App 335, 343-346; 497 NW2d 585 (1993), the court stated:

> A motion to compel discovery is a matter within the trial court's discretion, and the court's decision to grant or deny a discovery motion will be reversed only if there has been an abuse of that discretion. *Williams v Logan,* 184 Mich App 472, 476; 459 NW2d 62 (1990). * * *
>
> Generally, parties may obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action. MCR 2.302(B)(1). * * *
>
> We believe that this holding is consistent with Michigan's historical commitment to far-reaching, open, and effective discovery practice. *Eyde v Eyde,* 172 Mich App 49, 54; 431 NW2d 459 (1988). Discovery rules are to be construed in order to further the ends of justice. *Id.* The modern tendency is to broaden the scope of discovery when necessary to facilitate preparation, to guard against surprise, and to expedite justice. *Id.*

In the instant matter, defendants essentially object to the scope of discovery sought by plaintiffs. Defendants' objections lack merit.

Plaintiffs allege improper routing of electrical wiring led to the fire in the auxiliary engine compartment of the sweeper. However, adopting defendants' narrow construction would potentially exclude evidence of other electrical fires due to improper routing of wires in other areas of the

sweeper. Such evidence would be relevant to the issue of notice to defendants of a potential problem and their efforts—if any—at investigating and rectifying the alleged defects.

Defendants' narrow interpretation would also potentially exclude evidence where the cause of sweeper fires has been misidentified or not identified. In this regard, defendants' assertion that they have previously produced documents regarding fires that may have originated in the auxiliary engine compartment without limitation to alleged electrical events undermines any attempt to now limit the scope of discovery.

Moreover, defendants have not proffered any evidence to establish different sweeper models, model years or engines are sufficiently different in their *wiring* as to defeat discovery. Again, such evidence would be probative of defendants' knowledge—if any—of a potential defect and their response thereto. Such evidence would also contradict any claim that the fires were singular or coincidental events.

While the Transportation Recall Enhancement, Accountability and Documentation ("TREAD") Act, 49 USC 30116 *et seq.,* treats certain information submitted thereunder as confidential, the TREAD Act does not impose a blanket preclusion against disclosure of confidential treatment. See, e.g., 5 USC 552, 49 USC 30167(a), 49 CFR 512.23 and 49 CFR 576 *et seq.*

Finally, defendant Federal Signal's reasons for purchasing the damaged sweeper and hiring the expert witnesses may be relevant to establishing grounds for piercing its corporate veil.

Therefore, defendants shall provide full and complete answers to the interrogatories within fifteen (15) days of the date of this *Opinion and Order.*

B. Deem Requests for
Admissions Admitted

In *Hilgendorf v St John Hospital & Medical Center Corp,* 245 Mich App 670, 688-690; 630 NW2d 356 (2001), the court stated:

> MCR 2.312 governs requests for admissions. MCR 2.312(A) permits a party to make "a written request for the admission of the truth of a matter...that relates to statements or opinions of fact or the application of law to fact, including the genuineness of documents described in the request." The party asked to make an admission must then object to the request, or admit or deny the substance of the request for admission, in a timely manner. [MCR 2.312(B).] A failure to respond to the request is interpreted as an admission. [MCR 2.312(B)(1).] A request for admissions and any response "must be filed with the court either before service or within a reasonable time thereafter." [MCR 2.312(F).] "A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission." [MCR 2.312(D)(1).]
>
> The Michigan Supreme Court examined the purpose and effect of MCR 2.312 extensively in *Radtke v Miller, Canfield, Paddock & Stonef,* 453 Mich 413; 551 NW2d 698 (1996).] The Supreme Court differentiated between admissions under MCR 2.312, which are "judicial admissions," and admissions by a party opponent under MRE 801(d)(2), which are "evidentiary" admissions. [*Id.* at 420.] Judicial admissions are " 'formal concessions in the pleadings in the case or stipulations by a party or its counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact.' " [*Id.,* quoting 2 McCormick, Evidence (4th ed), § 254, p 142.] The Supreme Court stated:
>
> > [A]dmissions under MCR 2.312 are more a matter of civil procedure than of evidence law. The party who makes such an admission "has conclusively (or 'judicially') admitted such facts...and the opposing side need not introduce evidence to prove the facts." 2 Jones, Evidence (6th ed.), § 13C:14, p 310 (Nov 1995 supp). [*Radtke, supra* at 420.]
>
> Although both types of admissions are "subject to all pertinent objections to admissibility that might be interposed at trial," parties may attempt to explain or disprove an evidentiary admission, while a judicial admission is beyond challenge. [*Id.* at 420-421.] Nevertheless, judicial admissions must be read narrowly. [*Id.* at 425.]

As a preliminary matter, the existence of outstanding discovery would potentially support defendants' position that they are unable to respond to plaintiffs' request for admissions regarding the cause of the subject fire. However, outstanding discovery does not provide defendants with a blanket excuse.

The prior deposition testimony of Keith DeLorenzo, Pane Daranikone, Roger Himrod,

Tom Fox, Zlato Maticic and Stuart Neubarth relate to opinions of fact. MCR 2.312(A). The admissibility of this testimony into evidence or defendants' decision to use DeLorenzo as an expert witness do not influence the propriety of seeking an admission in this regard.

Similarly, the requests for admission concerning Frank Zwettler's e-mail, Arvin Karas' report and Neubarth's e-mail go to the genuineness of these documents, a proper subject of a request to admit. MCR 2.312(A).

Hence, defendants have not appropriately responded to plaintiffs' fourth requests for admission numbered 1, 3, 11, 12, 13, 14, 15, 16, 17, 20, 21 and 45.

Defendants' responses to request numbers 25, 31, 33 and 34 are ostensibly proper under MCR 2.312(B)(3). If plaintiffs are not satisfied with these responses, they should have engaged in further discovery relative thereto.

Defendants' response to request numbers 2, 18, 35 and 46 are ostensibly proper under MCR 2.312(B)(2). Whether the *sample* electrical training materials "conclusively" establish the routing of the subject wire is an issue for the jury.

III. CONCLUSION

For the reasons set forth above, plaintiffs City of Fraser and Michigan Municipal League Liability & Property Pool's motion to:

A. Compel discovery is GRANTED and

B. To have requests to admit deemed admitted is GRANTED, in part, and DENIED, in part.

Accordingly, defendants shall provide full and complete answers to the interrogatories and appropriately respond to the identified requests for admission within fifteen (15) days of the date of this *Opinion and Order.*

This Opinion and Order neither resolves the last pending claim in this matter nor closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.

Diane M. Druzinski, Circuit Court Judge

Date: MAY 26 2006

DMD/aac

cc: James T. Mellon, Esq.
James J. Majernik, Esq.
William D. Shailor, Esq.

DIANE M. DRUZINSKI
CIRCUIT JUDGE

MAY 26 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: _____ Court Clerk